

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YING JIAO YE,
Petitioner,
v.
LISA NORDHEIM,
Respondent.

Case No. 2:18-cv-10072-JVS-KES

ORDER DISMISSING HABEAS
PETITION WITHOUT PREJUDICE

I.

PROCEDURAL BACKGROUND.

On December 3, 2018, the Court docketed an undated Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (the “Petition”) filed by Petitioner Ying Jiao Ye (“Petitioner”). (Dkt. 1.) Petitioner alleges that she is a native and citizen of the People’s Republic of China. (*Id.* at 8.) On December 21, 2017, Petitioner was arrested and detained upon crossing the border into the United States without a valid entry document. (*Id.* at 2, 8.) On August 6, 2018, the immigration judge denied Petitioner asylum, withholding of removal, and protection under the Convention Against Torture. (*Id.* at 8-22.) Petitioner initially appealed this decision to the Board of Immigration Appeals but withdrew her appeal on

1 November 2, 2018. (Id. at 6-7.)

2
3 Petitioner seeks relief for “ICE [Immigration and Customs Enforcement]
4 detention beyond the time allowed by law.” (Id. at 2.) Petitioner includes two
5 grounds for relief: (1) unlawful denial of bail under “Section 236 of the
6 Immigration and Naturalization Act,”¹ and (2) detention for more than ninety days
7 after the final decision of the immigration court in violation of 8 U.S.C. § 1231.
8 (Id. at 3.) On screening,² the Court determined that both grounds for relief lack
9 merit. (Dkt. 11.) The Court dismissed the Petition without prejudice and with
10 leave to file a First Amended Petition on or before February 1, 2019. (Id. at 4.)
11 Petitioner never did so.

12 Additionally, non-resident attorney Mr. Lewis Hu has sought to appear pro
13 hac vice on behalf of Petitioner. (Dkts. 3, 6, 12, 14, 15.) The Court denied Mr.
14 Hu’s motions without prejudice for repeated failures to comply with the Local
15 Rules. (Dkts. 5, 8, 13, 16.)

16 On January 18, 2019, the postal service returned the Court’s January 4, 2019
17 minute order (Dkt. 13) as undeliverable. (Dkt. 16.) It was marked “Return to
18 Sender,” with “Released” handwritten across the front.³ (Id. at 1.) Assuming
19 Petitioner had been released from custody, on January 23, 2018, the Court issued an
20 Order to Show Cause, requiring that on or before February 22, 2019, Petitioner

21 ¹ The Court believes Petitioner intends to refer to Immigration and *Nationality*
22 Act § 236, as amended, 8 U.S.C. § 1226.

23 ² The Court screened the Petition consistent with its authority under Rule 4 of
24 the Rules Governing Section 2254 Cases in the United States District Courts. The
25 Rules also may be applied to habeas corpus actions filed under Section 2241. See
26 Rule 1(b), Rules Governing Section 2254 Cases.

27 ³ The inmate locator on the Orange County Sheriff’s Department website
28 confirms that Petitioner is no longer incarcerated at the James A. Musick Facility.
See <http://ws.ocsd.org/Whoisinjail/Search.aspx>.

1 show cause, in writing, why the Petition should not be dismissed as moot. (Dkt.
2 19.) The Order indicated that if Petitioner had been released from custody, then it
3 is unclear what relief the Court could provide in a habeas proceeding; if a favorable
4 decision cannot redress Petitioner's claim for relief, then the Petition would be
5 moot. (Id. at 2.) The Court mailed a copy of this Order to Mr. Hu at his office in
6 New York. (Id.)

7 On January 24, 2019, the postal service returned the Court's January 11,
8 2019 minute order (Dkt. 16) as undeliverable. (Dkt. 20 at 1.) On February 5, 2019,
9 the postal service returned the Court's Order to Show Cause (Dkt. 19) as
10 undeliverable as well. Neither Petitioner nor Mr. Hu ever responded to the Court's
11 Order to Show Cause.

12 II.

13 DISCUSSION.

14 Based on the foregoing, the Petition is dismissed on two grounds:

15 (1) Petitioner's failure to prosecute and to comply with Local Rule 41-6; and
16 (2) Petitioner's apparent release from detention, which renders the Petition moot.
17 See Local Rule 72-3.2 ("[I]f it plainly appears from the face of the petition ...that
18 the petitioner is not entitled to relief, the Magistrate Judge may prepare a proposed
19 order for summary dismissal and submit it and a proposed judgment to the District
20 Judge.").

21 A. Failure to Prosecute and to Comply with Local Rule 41-6.

22 Local Rule 41-6 provides as follows:

23 A party proceeding pro se⁴ shall keep the Court and opposing parties
24 apprised of such party's current address and telephone number, if any,

25 ⁴ This Rule applies here because the Court never granted Mr. Hu pro hac vice
26 status. (See Dkt. 8 (after Mr. Hu filed another noncompliant motion to appear pro
27 hac vice, removing Mr. Hu as counsel of record and treating Petitioner as self-
28 represented).)

1 and e-mail address, if any. If mail directed by the Clerk to a pro se
2 plaintiff's address of record is returned undelivered by the Postal
3 Service, and if, within fifteen (15) days of the service date, such
4 plaintiff fails to notify, in writing, the Court and opposing parties of
5 said plaintiff's current address, the Court may dismiss the action with
6 or without prejudice for want of prosecution.

7 It is well-established that a district court may dismiss an action for failure to
8 prosecute, failure to follow court orders, or failure to comply with the federal or
9 local rules. See Fed. R. Civ. P. 41(b); L.R. 41-1, 41-6; Link v. Wabash R. Co., 370
10 U.S. 626, 629-30 (1962); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per
11 curiam).

12 In determining whether to dismiss a case for failure to prosecute, failure to
13 comply with court orders, or failure to comply with a local rule, a district court
14 should consider the following five factors: (1) the public's interest in expeditious
15 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
16 prejudice to defendants; (4) the availability of less drastic sanctions; and (5) the
17 public policy favoring disposition of cases on their merits. See In re
18 Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226-28, 1234-52
19 (9th Cir. 2006); Gibbs v. Hedgpeth, 389 F. App'x 671, 673 (9th Cir. 2010)
20 (applying five factors in habeas proceeding). The test is not "mechanical," but
21 provides a "non-exhaustive list of things" to "think about." Valley Eng'rs v. Elec.
22 Eng'g Co., 158 F.3d 1051, 1057 (9th Cir. 1998).

23 Here, the five factors support dismissal of Petitioner's action based on her
24 failure to provide the Court a current address in compliance with Local Rule 41-6
25 and her failure to file a timely First Amended Petition. The first factor—the
26 public's interest in the expeditious resolution of litigation—"always favors
27 dismissal." Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999).

28 The second factor—the Court's need to manage its docket—also supports

1 dismissal. The Ninth Circuit has noted that the “legitimate and solitary” objective
2 of provisions such as Local Rule 41-6 is “to give pro se litigants an incentive to
3 inform the court of any change of address to allow for the orderly processing of the
4 lawsuit.” Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988). Petitioner’s failure
5 to provide an updated address undermines this objective.

6 The third factor—prejudice to Respondents—supports dismissal. This case
7 has been pending for several months without action by Petitioner, and neither
8 Petitioner nor her proposed counsel responded to the Order to Show Cause or filed
9 a First Amended Petition. “[T]he failure to prosecute diligently is sufficient by
10 itself to justify a dismissal, even in the absence of a showing of actual prejudice to
11 the defendant from the failure ... The law presumes injury from unreasonable
12 delay.” Southwest Marine, Inc. v. Danzig, 217 F.3d 1128, 1138 (9th Cir. 2000)
13 (citing Moneymaker v. CoBen (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994)).

14 The fourth factor—availability of less drastic sanctions—favors dismissal.
15 After the Court learned of Petitioner’s potential release from custody, it
16 independently issued an order affirmatively requiring Petitioner to provide an
17 update on her custody status and sent a copy of this order to Mr. Hu in New York.
18 (Dkt. 19.) The postal service returned the order sent to Petitioner as undeliverable
19 (Dkt. 21) and Mr. Hu has not responded. The Court is therefore unable to contact
20 Petitioner to impose some lesser sanction. See Carey, 856 F.2d at 1441.

21 The fifth factor—public policy favoring a disposition of an action on its
22 merits—weighs against dismissal. Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th
23 Cir. 2002). The impact of that factor is mitigated here, however, by the likelihood
24 that Petitioner’s release from custody rendered her claim moot, as discussed below.

25 Since four of five enumerated factors support dismissal, this action is
26 dismissed without prejudice pursuant to Rule 41(b) and Local Rule 41-6. See
27 Local Rule 41-6 (authorizing dismissal “with or without prejudice for want of
28 prosecution”).

1 **B. Mootness.**

2 Alternatively, the Petition is dismissed without prejudice as moot. Based on
3 the returned mail, it appears Petitioner has been released from custody. (Dkts. 18,
4 20, 21.)

5 Article III of the Constitution “limits the jurisdiction of the federal courts to
6 live cases and controversies.” Kittel v. Thomas, 620 F.3d 949, 951 (9th Cir. 2010)
7 (citations omitted); see also United States v. Strong, 489 F.3d 1055, 1059 (9th Cir.
8 2007) (citations omitted). An actual case or controversy exists when, throughout
9 the litigation, a petitioner continues to have a “personal stake in the outcome” of
10 the lawsuit as a result of some actual injury that is likely to be “redressed by a
11 favorable judicial decision.” Spencer v. Kemna, 523 U.S. 1, 7 (1998). When,
12 because of events that occur after a case is initiated, a court cannot give any
13 effectual relief in favor of the petitioner, the proceeding becomes moot. Calderon
14 v. Moore, 518 U.S. 149, 150 (1996).

15 Consequently, habeas petitions that raise claims that are fully resolved by
16 release from custody are rendered moot upon the petitioner’s release. Abdala v.
17 INS, 488 F.3d 1061, 1065 (9th Cir. 2007); see also Cox v. McCarthy, 829 F.2d
18 800, 803 (9th Cir. 1987) (dismissing habeas petition as moot where petitioners
19 were released from custody). Because mootness is a jurisdictional bar, moot
20 petitions should be dismissed. Kittel, 620 F.3d at 951-52.

21 Assuming Petitioner has been released from immigration custody as
22 indicated on the returned mailing (Dkt. 18), there is no further relief this Court can
23 provide in this action. Petitioner has neither responded to the Court’s Order to
24 Show Cause and nor asserted any collateral consequences that are redressable by
25 success on her original petition, which challenged the length of her detention.
26 Spencer, 523 U.S. at 7 (“Once the convict’s sentence has expired ... some concrete
27 and continuing injury other than the now-ended incarceration or parole—some
28 ‘collateral consequence’ of the conviction—must exist if the suit is to be

1 maintained.”).

2 There is an exception to the mootness doctrine for cases that are “capable of
3 repetition, yet evading review.” Id. at 17. However, this exception is limited to
4 extraordinary cases where (1) the duration of the challenged action is too short to
5 allow for full litigation before it ends, and (2) there is a reasonable expectation that
6 the petitioner will be subjected to the challenged action again. Id.; Alaska Ctr. For
7 Env’t v. U.S. Forest Serv., 189 F.3d 851, 854-55 (9th Cir. 1999). Petitioner has
8 “the burden of showing there is a reasonable expectation that [she] will once again
9 be subjected to the challenged activity.” Lee v. Schmidt-Wenzel, 766 F.2d 1387,
10 1390 (9th Cir. 1985) (citation omitted). Petitioner has not shown that there is a
11 reasonable expectation that she will be subject to indefinite detention proceedings
12 in the future, or that the time spent in ICE detention will always be so short as to
13 evade review.

14 **III.**

15 **CONCLUSION.**

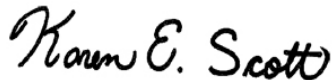
16 Based on the above, the Petition is dismissed without prejudice. A separate
17 judgment will be entered.

18
19 DATED: February 27, 2019



21
22 HON. JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

23 Presented by:

24 

25 HON. KAREN E. SCOTT
26 United States Magistrate Judge
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